

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

DOMIANO FONDINO, JR.

Debtor

Chapter 13

Case No. 20-12015 (AMC)

Hearing Date: 6/9/2020 at 11:00 a.m.
Location: 900 Market Street, Ctrm. 4
Philadelphia, PA 19107

**MOTION OF FRANKLIN MINT FEDERAL CREDIT UNION
FOR AN ORDER VACATING THE AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)
AND A WAIVER OF THE FOURTEEN DAY STAY OF SUCH ORDER**

TO: THE HONORABLE ASHELY M. CHAN,
UNITED STATES BANKRUPTCY JUDGE:

The motion of Franklin Mint Federal Credit Union (“FMFCU”), by and through its undersigned attorneys, for an order vacating the automatic stay pursuant to 11 U.S.C. § 362(d) and Rule 4001(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and a waiver of the fourteen (14) day stay of such an order, respectfully represents as follows:

BACKGROUND

1. On or about May 9, 2019, FMFCU made certain loans, advances, and extensions of credit to Domiano Fondino, Jr. (the “Debtor”) in the maximum amount of \$33,285.37 (the “Auto Loan”) pursuant to that certain Loan Agreement and Consumer Credit Disclosure Statement (the “Auto Agreement”).

2. In consideration for the Auto Loan, the Debtor gave a security interest in favor of FMFCU in the title to the collateral being purchased with the Auto Loan, a 2015 Cadillac ATS (the “Vehicle”).

3. On April 16, 2020 (the “Petition Date”), the Debtor filed a voluntary petition pursuant to Chapter 13 of Title 11 of the United States Code (the “Bankruptcy Code”).

4. On the Petition Date, the Debtor also filed a Chapter 13 plan (the “Plan”).

5. As of the Petition Date, FMFCU held a claim secured by a lien on the title to the Vehicle in an amount no less than \$28,037.52, which includes no less than \$2,934.27 in pre-petition arrears. (the “Auto Loan Claim”). The Auto Loan Claim was filed on the claims docket on May 13, 2020 at Claim No. 7.

6. The Plan provides that the Debtor will retain the Vehicle and make monthly payments to FMFCU. No such payments have been made to date. See Plan, § 4(b).

7. The Debtor failed to make the May 2020 payment due and owing to FMFCU in the amount of \$469.57. Another installment of \$469.57 is due on June 8, 2020.

8. For the reasons hereinafter set forth, FMFCU is entitled to the entry of an order vacating the automatic stay to allow it to exercise its state law rights and remedies with respect to the Vehicle.

THE RELIEF REQUESTED AND THE REASONS THEREFOR

9. Section 362(d) of the Bankruptcy Code provides that, on request of a party in interest and after notice and a hearing, the Court shall grant relief from the automatic stay of Section 362(a) of the Bankruptcy Code for cause. See 11 U.S.C. § 362(d)(1).

10. While the term “cause” is not explicitly defined, it includes a lack of adequate protection of an interest in property. See id.

11. As noted by the Third Circuit Court of Appeals, the language of Section 362(d) is mandatory. See In re Indian Palms Assocs., Ltd., 61 F.3d 197, 208 (3d Cir. 1995).

12. The Debtor is in default of his obligations under the Auto Loan by reason of his failure to make post-petition payments as and when they came due.

13. FMFCU has additionally not been furnished proof by the Debtor that the Vehicle is adequately insured.

14. These circumstances constitute cause within the meaning of Section 362(d)(1) of the Bankruptcy Code justifying relief from the automatic stay. See In re Tainan, 48 B.R. 250, 252 (Bankr. E.D. Pa. 1985) (“A debtor’s continued failure to maintain regular payments to a secured creditor is sufficient to entitle a creditor to a modification of the stay”).

15. Accordingly, FMFCU should be granted relief from the automatic stay as to the Debtor to enforce its rights with respect to the Vehicle in accordance with state law.

CONCLUSION

16. For the foregoing reasons, FMFCU respectfully requests that this Court enter an order granting FMFCU relief from the automatic stay.

WHEREFORE, Franklin Mint Federal Credit Union respectfully requests the entry of an order granting the relief requested herein, together with such other and further relief as is just and proper.

Respectfully submitted:

KLEHR | HARRISON | HARVEY |
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Dated: May 14, 2020